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REMARKS/ARGUMENTS

The courtesy extended to the undersigned attorney by Examiner Simone during the telephone interview on April 26, 2004 is noted with appreciation. The following remarks represent a summary of the matters discussed during the interview.

In the Official Action, the Examiner rejected Claims 1-7 under the judicially created doctrine of double patenting over the claims of U.S. Patent No. 6,584,890. In support of this rejection, the Examiner made the following statements:

"The subject matter claimed in the instant application is fully disclosed in the ('890) patent..." and

"there is no apparent reason why applicant was prevented from presenting claims corresponding to those of the instant application during prosecution of the application which matured into a patent."

Both of the above statements are incorrect. The present application discloses a nut transport element for use in a feed chain of a high speed nutcracking apparatus, wherein the nut transport element comprises a block-like body which is formed of a high impact plastic material. Some of the dependent claims further recite that the plastic material includes a colorant which by design is representative of a particular size of the nut receptacle in the element.

The '890 patent does not disclose the use of such a material in fabricating the nut transport elements. Rather, the cross hatching of the nut transport elements 65 as seen in Figs. 4-5 and 7 of the '890 patent indicates that the elements are formed of a metal (note Section 608.02 of the MPEP), and indeed, the commercial machines which embody the invention of the '890 patent and the earlier Quantz patents of record,

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utilized nut transport elements fabricated from an aluminum alloy, note page 2, lines 9-10 of the specification of the present application. Since the novel plastic composition, and the resulting advantages, are not disclosed in the '890 patent, it is incorrect to contend that the claims of the instant application could have been included in the earlier '890 patent. Thus the double patenting rejection is seen to be untenable, and should be withdrawn.

It is also the applicant's position that the presently claimed invention is both novel and unobvious in light of the known prior art. As pointed out to the Examiner during the above referenced interview, the present invention relates to improved nut transport elements for use in a high speed nutcracking apparatus of the type disclosed in the several prior patents to Quantz, which are of record. Specifically, the invention involves the surprising discovery that the nut transport elements may be fabricated from a high impact plastic material rather than the conventional aluminum alloy, and that the use of a plastic material as claimed provides significant and unexpected advantages as summarized on pages 1-3 of the specification. It cannot be said that these benefits and advantages would have been obvious.

For the reasons set forth above, it is submitted that the double patenting objection should be withdrawn, and that the improvement of the present invention is both novel and unobvious over the cited prior art. Accordingly, it is believed that the present application is in condition for immediate allowance, and such action is solicited.

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Respectfully submitted,

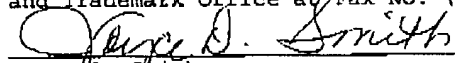


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Joyce D. Smith  
Date April 27, 2004